

REMARKS

Claims 1 and 3-25 are pending in the application. Claims 1 and 3-18 are under examination. Claims 19 to 25 were withdrawn as being directed to non-elected subject matter. The elected claims set forth, herein, are merely to comply with the Restriction Requirement and is not to be construed as surrender of any subject matter in the instant application. Applicants hereby reserve the right to pursue the subject matter of the canceled claims in one or more divisional patent applications.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-3, 8-16 are rejected under 35 U.S.C. § 102(b) as being anticipated by Guy (Guy, Gene therapy for nuclear complementation of the G11778A LHON mitochondrial DNA mutation, *Neurology*, (April 24, 2001) Vol. 56, No. 8 Supplement 3, pp. A14. print. Meeting Info.: 53rd Annual Meeting of the American Academy of Neurology. Philadelphia, PA, USA. May 05-11, 2001. American Academy of Neurology. CODEN: NEURAI. ISSN: 0028-3878).

Applicants respectfully traverse. Applicants have attached the 37 C.F.R. § 1.131 Declaration by Dr. John Guy. As per the declaration, the inventor had conceived the invention around 1997 and diligently proceeded towards reducing the invention to practice during the period from March 2000 through the filing of US Provisional Patent Applications: 60/271,073, filed February 23, 2001; US Provisional Patent Application 60/275,288, filed March 12, 2001; and, U.S. Patent Application No. 10/164,363 on June 6, 2002. As such, the instant invention antedates the above cited references as Applicants conceived and reduced to practice the instant invention prior to the publication date of the cited reference.

In view thereof, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

Claims 1-6, and 8-18 were rejected under 35 U.S.C. § 102(a) as being anticipated by Guy et al. (Guy et al., *Ann Neurol* 52(5): 534-42, 2002, published online October 11 2002).

Applicants respectfully traverse. Applicants have attached the 37 C.F.R. § 1.131 Declaration by Dr. John Guy. As per the declaration, the inventor had conceived the invention around 1997 and diligently proceeded towards reducing the invention to practice during the period from March 2000 through the filing of US Provisional Patent Applications: 60/271,073, filed February 23, 2001; US Provisional Patent Application 60/275,288, filed March 12, 2001; and, U.S. Patent Application No. 10/164,363 on June 6, 2002. As such, the instant invention antedates the above cited references as Applicants conceived and reduced to practice the instant invention prior to the publication date of the cited reference.

In view thereof, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

Claims 1, 8, 10-12, 15-18 were rejected under 35 U.S.C. § 102(a) as being anticipated by Guy et al. (Guy et al., Gene therapy with the ND4 subunit gene recoded in the universal genetic code reverses a mitochondrial deficiency causing Leber Hereditary Optic Neuropathy (LHON), *Neurology*, (April 9, 2002) Vol. 58, No. 7 Supplement 3, pp. A508. print. Meeting Info.: 54th Annual Meeting of the American Academy of Neurology. Denver, Colorado, USA. April 13-20, 2002. CODEN: NEURAI. ISSN: 0028-3878).

Applicants respectfully traverse. Applicants have attached the 37 C.F.R. § 1.131 Declaration by Dr. John Guy. As per the declaration, the inventor had conceived the invention around 1997 and diligently proceeded towards reducing the invention to practice during the period from March 2000 through the filing of US Provisional Patent Applications: 60/271,073, filed February 23, 2001; US Provisional Patent Application 60/275,288, filed March 12, 2001; and, U.S. Patent Application No. 10/164,363 on June 6, 2002. As such, the instant invention

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antedates the above cited references as Applicants conceived and reduced to practice the instant invention prior to the publication date of the cited reference.

In view thereof, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

Claims 1-6, 8-18 were rejected under 35 U.S.C. §102(e) as being anticipated by Manfredi et al. (Manfredi et al., U.S. Patent Application Publication No: 2004/0072774, Publication date, April 15, 2004, which claims benefits of provisional application No. 60/358,935, filed on Feb. 23, 2002).

Applicants respectfully traverse. Applicants have attached the 37 C.F.R. § 1.131 Declaration by Dr. John Guy. As per the declaration, the inventor had conceived the invention around 1997 and diligently proceeded towards reducing the invention to practice during the period from March 2000 through the filing of US Provisional Patent Applications: 60/271,073, filed February 23, 2001; US Provisional Patent Application 60/275,288, filed March 12, 2001; and, U.S. Patent Application No. 10/164,363 on June 6, 2002. As such, the instant invention antedates the above cited references as Applicants conceived and reduced to practice the instant invention prior to the publication date of the cited reference.

In view thereof, Applicants respectfully request reconsideration and withdrawal of the instant rejection.

CONCLUSION

In view of the foregoing, reconsideration and withdrawal of all rejections and allowance of the application with claims 1, 3-18 are respectfully solicited. The amended claims set forth, herein, are merely to expedite prosecution and allowance of the application and is not to be construed as surrender of any subject matter in the instant application. If there are any remaining issues or the Examiner believes that a telephone conversation with the Applicants' attorney

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would be helpful in expediting prosecution of this application, the Examiner is invited to call the undersigned at telephone number shown below.

Although, Applicants believe that no extensions of time are required with submission of this paper, Applicants request that this submission also be considered as a petition for any further extensions of time if necessary. The Commissioner for Patents and Trademarks is hereby authorized to charge the amount due for any retroactive extensions of time and any deficiency in any fees due with the filing of this paper or credit any overpayment in any fees paid on the filing or during prosecution of this application to Deposit Account No. 50-0951.

Respectfully submitted,
AKERMAN SENTERFITT



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